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5 Attorneys for Plaintiffs

6 IN THE UNITED STATE DISTRICT COURT

7 FOR THE DISTRICT OF OREGON

*Portland*

8 ) Case No. CV '11 - 260 PK  
 9 DIEGO MATA-GONZALEZ,  
 LILIA LOPEZ-GUZMAN,  
 VLADIMIR MATA-LOPEZ,  
 JOHNNY MATA-LOPEZ,

10 )  
 11 Plaintiffs,  
 vs.

12 )  
 13 OFFICER MIGUEL MONICO, OFFICER  
 JANSEN, OFFICER DUSTIN DeHAVEN,  
 OFFICER BRUCE SCHMID, SERGEANT  
 BRIAN SCHMID, SERGEANT  
 NOFFSINGER, OFFICER R. VENABLE,  
 CITY OF CORNELIUS, by and through the  
 Cornelius Police Department, JOHN DOES  
 #1-10, Cornelius Police Department  
 employees, WASHINGTON COUNTY, a  
 political subdivision of the State of Oregon, by  
 and through the Washington County  
 Department of Human Services and the  
 Washington County Sheriff's Office, LAURIE  
 WUTHRICH, HEATHER KITTO, JOHN  
 DOES #11-20, Oregon Department of Human  
 Services employees, DEPUTY J. HERMANN,)  
 DEPUTY C. BOWMAN, JOHN DOES #21- )  
 30, Washington County Sheriff's Office  
 employees,  
 Defendants.)

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1  
2                   **COMPLAINT AND DEMAND FOR JURY TRIAL**

3                   Plaintiffs, by and through their attorney, Michelle Burrows, Attorney at Law, bring their  
4 Complaint herein and state and allege as follows:

5                   **INTRODUCTORY STATEMENT**

6                   1.

7                   This action is filed by Plaintiffs under 42 U.S.C. § 1983, and ORS 30.265, for events  
8 occurring on or about February 2010 through May 2010, alleging arrest without probable cause,  
9 malicious prosecution, illegal search and seizure, substantive due process violations, assault,  
10 battery, and intentional infliction of emotional distress, in violation of the Fourth and Fourteenth  
11 Amendments of the United States Constitution.

12                   2.

13                   This court has jurisdiction over Plaintiffs' claims of violations of federal Constitutional  
14 Rights under 28 U.S.C. §§ 1331 and 1343.

15                   3.

16                   Venue is proper under 28 U.S.C. § 1391(b), in that one or more of the defendants reside  
17 in the District of Oregon and Plaintiffs' claims for relief arose in this district.

18                   4.

19                   The court has jurisdiction over Plaintiffs' pendent state law claims under 28 U.S.C. §  
20 1367.

21                   ///

22                   ///

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24                   Attorney at Law  
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                     503/241-1955

1                   PARTIES

2                   5.

3                 At all material times Plaintiff Diego Mata-Gonzalez (“Plaintiff Diego”) was a resident of  
4                 the City of Cornelius, Washington County, Oregon.

5                   6.

6                 At all material times, Plaintiff Lilia Lopez-Guzman (“Plaintiff Lilia”) was a resident of  
7                 the City of Cornelius, Washington County, Oregon.

8                   7.

9                 At all material times, Plaintiff Vladimir Mata-Lopez (“Plaintiff Vladimir”) was a resident  
10                 of the City of Cornelius, Washington County, Oregon. At the time of the events at issue,  
11                 Plaintiff Vladimir was 13-years-old.

12                   8.

13                 At all material times, Plaintiff Johnny Mata-Lopez (“Plaintiff Johnny”) was a resident of  
14                 the City of Cornelius, Washington County, Oregon. At the time of the events at issue, Plaintiff  
15                 Johnny was 9-years-old.

16                   9.

17                 At all material times, Officer Miguel Monico (“Defendant Monico”) was a law  
18                 enforcement officer for the Cornelius Police Department, an entity of the City of Cornelius, and  
19                 was working under the color of law. Defendant Monico was the officer in charge of the alleged  
20                 attempted murder case against Diego Mata-Lopez, Jr., and was involved in the search of  
21                 Plaintiffs’ residence and the arrest and false charges of Plaintiff Diego. Defendant Monico is  
22                 sued in his individual capacity.

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2 10.  
3

4 At all material times, Officer Jansen (“Defendant Jansen”) was a law enforcement officer  
5 for City of Cornelius Police Department, an entity of the City of Cornelius, and was working  
6 under the color of law. Defendant Jansen was the officer who procured the search warrant for  
7 the search of Plaintiffs’ residence on February 4. Defendant Jansen involved in the search of  
8 Plaintiffs’ residence and in the false charges against Plaintiff Diego. Defendant Jansen is sued in  
9 his individual capacity.

10  
11 11.  
12

13 At all material times Officer DeHaven (“Defendant DeHaven”) was a law enforcement  
14 officer for the City of Cornelius Police Department, an entity of the City of Cornelius, and was  
15 working under the color of law. Defendant DeHaven was involved in the search of Plaintiffs’  
16 residence, and was involved in the arrest of and false charges against Plaintiff Diego. Defendant  
17 DeHaven is sued in his individual capacity.

18  
19 12.  
20

21 At all material times, Sergeant Brian Schmid (“Defendant Brian”) was a law enforcement  
22 officer for the City of Cornelius Police Department, an entity of the City of Cornelius, and was  
23 working under the color of law. Defendant Brian was involved in the search of Plaintiffs’  
24 residence and in the arrest of and false charges against Plaintiff Diego. Defendant Brian is sued  
25 in his individual capacity.

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27 13.  
28

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1 At all material times, Sergeant Noffsinger (“Defendant Noffsinger”) was a law  
2 enforcement officer for the City of Cornelius Police Department, an entity of the City of  
3 Cornelius, and was working under the color of law. Defendant Noffsinger was involved in the  
4 search of Plaintiffs’ residence, and involved in the false charges against Plaintiff Diego.  
5 Defendant Noffsinger is sued in his individual capacity.

6  
7 14.

8 At all material times, Officer Bruce Schmid (“Defendant Bruce”) was a law enforcement  
9 officer for the City of Cornelius Police Department, an entity of the City of Cornelius, and was  
10 working under the color of law. Defendant Bruce was involved in the search of Plaintiffs’  
11 residence, and in the arrest of and false charges against Plaintiff Diego. Defendant Bruce is sued  
12 in his individual capacity.

13  
14 15.

15 At all material times, Officer R. Venable (“Defendant Venable”) was a law enforcement  
16 officer for the City of Cornelius Police Department, an entity of the City of Cornelius, and was  
17 working under the color of law. Defendant Venable was involved in the search of Plaintiffs’  
18 residence, and was involved in the arrest of and false charges against Plaintiff Diego. Defendant  
19 Venable is sued in his individual capacity.

20  
21 16.

22 At all material times, John Does #1-10 (“Defendant John Does #1-10”) were employees  
23 of the City of Cornelius Police Department. At all material times, Defendant John Does #1-10  
24 were working under the color of law. Defendant John Does #1-10 were involved in the search of  
25 Plaintiffs’ residence, and in the arrest of and false charges against Plaintiff Diego. Defendant

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1 John Does #1-10 are sued in their individual capacities, and will be individually named when  
2 discovery reveals their identity.

3 17.

4 At all material times, Laurie Wuthrich (“Defendant Wuthrich”) was an employee of the  
5 Department of Human Services for the State of Oregon. At all material times, Defendant  
6 Wuthrich was working under the color of law. Defendant Wuthrich was involved in the seizure  
7 of Plaintiff Vladimir and Plaintiff Johnny from their home in February 2010, and was involved in  
8 keeping the children away from their parents from February 2010 through May 2010 without  
9 probable cause. Defendant Wuthrich is sued in her individual capacity

10 18.

11 At all material times, Heather Kitto (“Defendant Kitto”) was an employee of the  
12 Department of Human Services for the State of Oregon. At all material times, Defendant Kitto  
13 was working under the color of law. Defendant Kitto was involved in the seizure of Plaintiff  
14 Vladimir and Plaintiff Johnny from their home in February 2010, and was involved in keeping  
15 the children away from their parents from February 2010 through May 2010 without probable  
16 cause. Defendant Kitto is sued in her individual capacity.

17 19.

18 At all material times, John Does #11-20 (“Defendant John Does #11-20”) were  
19 employees of the Department of Human Services for the State of Oregon. At all material times,  
20 Defendant John Does #11-20 were working under the color of law. Defendant John Does #11-20  
21 were involved in the seizure of Plaintiff Vladimir and Plaintiff Johnny from their home in  
22 February 2010, and were involved in keeping the children away from their parents from

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1 February 2010 through May 2010 without probable cause. Defendant John Does #11-20 are  
2 sued in their individual capacities, and will be individually named when discovery reveals their  
3 identity.

4 20.

5 At all material times, Deputy J. Hermann (“Defendant Hermann”) was a law enforcement  
6 officer for the Washington County Sheriff’s Department, and was working under the color of  
7 law. Defendant Hermann was involved in the arrest of and false charges against Plaintiff Diego.  
8 Defendant Hermann is sued in his individual capacity.

9 21.

10 At all material times, Deputy C. Bowman (“Defendant Bowman”) was a law enforcement  
11 officer for the Washington County Sheriff’s Department, and was working under the color of  
12 law. Defendant Bowman was involved in the arrest of and false charges against Plaintiff Diego.  
13 Defendant Bowman is sued in his individual capacity.

14 22.

15 At all material times, John Does #21-30 (“Defendant John Does #21-30”) were  
16 employees at the Washington County Sheriff’s Department, and were working under the color of  
17 law. Defendant John Does #21-30 were involved in the arrest of and false charges against  
18 Plaintiff Diego. Defendants John Does #21-30 are sued in their individual capacities, and will be  
19 individually named when discovery reveals their identity.

20 23.

21 At all material times the City of Cornelius (“Defendant City of Cornelius”) was a  
22 political subdivision of the State of Oregon. As a local governmental entity, Defendant City of

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Cornelius is a suable person under 42 U.S.C. § 1983. At all times relevant to this Complaint, Defendant City of Cornelius employed Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Venable, Defendant Brian, Defendant Noffsinger, and Defendant John Does #1-10. At all times relevant to this Complaint, Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Brian, Defendant Bruce, Defendant Venable, Defendant Noffsinger, and Defendant John Does #1-10, were acting pursuant to Defendant City of Cornelius' laws, customs, and/or policies. As the employer of Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Venable, Defendant Brian, Defendant Noffsinger, and Defendant John Does #1-10, Defendant City of Cornelius is vicariously liable for all of the tortuous and unconstitutional acts and omissions of the defendants committed within the course and scope of their employment, pursuant to ORS 30.265.

24.

At all material times, Washington County (“Defendant Washington County”) was a political subdivision of the State of Oregon. As a local government entity, Defendant Washington County is a suable person under 42 U.S.C. § 1983. At all times relevant to this Complaint, Defendant Washington County employed Defendant Hermann, Defendant Bowman, and Defendant John Does #21-30. At all times relevant to this Complaint, Defendant Hermann, Defendant Bowman, and Defendant John Does #21-30, were acting pursuant to Defendant Washington County’s laws, customs, and/or policies. As the employer of Defendant Hermann, Defendant Bowman, and Defendant John Does #21-30, Defendant Washington County is vicariously liable for all of the tortious and unconstitutional acts and omissions of the defendants committed within the course and scope of their employment, pursuant to ORS 30.265.

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1  
2 25.  
3  
4 All Defendants acted under color of state or local law at all times relevant to this  
5 Complaint.  
6  
7 Plaintiff is entitled to an award of attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.  
8

9 **FACTUAL ALLEGATIONS**  
10  
11

12 26.  
13  
14 On or about February 4, 2010, Defendant Jansen of the Cornelius Police Department  
15 obtained a search warrant from Judge Bailey, authorizing the search of Plaintiffs' residence at  
16 973 S. 3<sup>rd</sup> Court, Cornelius, Oregon, and several vehicles connected with the residence. The  
17 warrant authorized the seizure of "weapons, including any and all firearms, ammunition,  
18 hostlers, gun cases, cleaning kits, gun parts including triggers, grips and flash suppressers, bill of  
19 sales, receipt, applications to purchase firearms and ammunition magazines, ammunition, items  
20 of identification, including but not limited to resident alien registration cards, driver's licenses,  
21 and the like; and any persons located on the property or curtilage of the residence." The  
22 probable cause supporting the search warrant was based on the suspicion that Plaintiff Diego's  
23 son, Diego Mata-Lopez, Jr., who lived with Plaintiffs, had allegedly been involved in an  
24 attempted gang-related homicide. This position is supported by the Cornelius Police Department  
25 narrative which states that the search warrant was obtained by Officer Jansen "pursuant to an  
26 attempted homicide shooting investigation number CNP10-23014." None of the Plaintiffs were

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1 the targets or subjects of either the criminal investigation or the warrant. Ex. 1, Search Warrant  
2 and Affidavit of Officer Jansen, dated February 4, 2010.

3 28.

4 Defendant Monico and Defendant DeHaven started the search at approximately 2 p.m.  
5 on February 4, 2010. At approximately 2:50 p.m., Plaintiff Diego, Plaintiff Lilia, and Plaintiff  
6 Vladimir, arrived in one of the vehicles named in the search warrant. Defendant Monico read the  
7 search warrant to them. Defendant DeHaven began to interrogate Plaintiff Vladimir, who was at  
8 that time 13-years-old, about the recent drive-by shooting. Defendant DeHaven finally stopped  
9 the interrogation, after Plaintiff Diego and Plaintiff Lilia told Plaintiff Vladimir to stop talking to  
10 Defendant DeHaven. The Plaintiffs left.

12 29.

13 The officers seized nine objects in their search of Plaintiffs' residence. They are  
14 enumerated in the police report: (1) Red and black paper with gang writing seized by Officer  
15 Noffsinger; (2) A clear plastic baggie containing white powder substance that allegedly field-  
16 tested positive for cocaine seized by Officer Monico; (3) A small clear plastic bindle of  
17 suspected marijuana weighing approximately 0.3 grams seized by Officer Monico; (4) A gray  
18 Rebok sweatshirt with blood on both sleeve ends found by Officer DeHaven; (5) One unspent  
19 brass colored 9mm full metal jacket bullet with an indented primer, found inside the exterior  
20 grass clippings recycle bin by Officer DeHaven; (6) One notebook containing alleged gang  
21 writing in the living room stereo speaker by Officer Bruce Schmid; (7) 3 Mexican passports and  
22 identification cards located inside a wood cabinet in the garage by Officer R. Venable; (8)  
23 Resident alien cards located in a brown wallet by Sergeant Brian Schmid; (9) Notebook –

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1 Financial ledger found in master bedroom with possible narcotic-illegal financial activity with  
 2 gang and child writing found by Officer Monico. Only three of these objects were authorized by  
 3 the warrant: the brass colored 9mm full metal jacket bullet, the Mexican passports and  
 4 identification cards, and resident alien cards. The other six items seized fell blatantly outside the  
 5 scope of the warrant.

6  
7 30.

8 After the search was completed and the officers had left the residence, Defendant  
 9 DeHaven and Defendant Monico returned to Plaintiffs' residence, under the pretense of having  
 10 left a notebook at the residence. They found Plaintiff Diego at home and read him his *Miranda*  
 11 rights. Then they began asking him questions about drugs they claim they found in the home.  
 12 Plaintiff Diego was intimidated by the men and did not feel free to leave. According to the police  
 13 report, Plaintiff Diego admitted that the powdered substance found was cocaine, that it was his,  
 14 and that it was old. This was a lie. Diego speaks almost no English. In fact, Plaintiff Diego  
 15 tried to explain to the officers that the substance they had seized was egg shells used for his son's  
 16 science project. Plaintiff Diego showed the officers an identical bag with the label on it and the  
 17 store in which it was bought. Officer DeHaven subsequently "found" the notebook in his pocket.  
 18 This interchange constitutes an arrest that was pre-textual and without probable cause.

19  
20 31.

21 On February 22, 2010, the police report mentioned in paragraph 29 was referred to the  
 22 Department of Human Services for a Threat of Harm assessment for the minor children of  
 23 Plaintiff Diego and Plaintiff Lilia. On February 23, 2010, Defendant Wuthrich was assigned to  
 24 the case. Defendant Wuthrich called the Cornelius Police Department and was told by

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1 Defendant Noffsinger to talk to Defendant Monico, as Defendant Monico was in charge of the  
2 criminal investigation of Diego Mata-Lopez, Jr., whose alleged actions were the reason for the  
3 search of Plaintiffs' residence.

4 32.

5 Defendant Monico told Defendant Wuthrich that he did not see any immediate safety  
6 threat to the children, Plaintiff Vladimir and Plaintiff Johnny, and requested that Defendant  
7 Wuthrich wait until the following week, or at least until February 26, 2010, to contact Plaintiffs  
8 or take any action. Defendant Wuthrich did not do so.

9 33.

10 Defendant Kitto was assigned as a supervisor on the case at DHS on February 25, 2010.  
11 On that day, she ordered the Department of Human Services to take Plaintiff Vladimir and  
12 Plaintiff Johnny into protective custody. The "Fact Findings" in the DHS report state that "drug  
13 use by the parents present a threat of harm." No drug use by Plaintiff Diego or Plaintiff Lilia had  
14 been established in any of the reports or information given to Defendant Wuthrich or Defendant  
15 Kitto, and the police reports contained intentionally false information.

16 34.

17 On February 26, 2010, Defendant Monico returned with a few other officers to  
18 Plaintiffs' residence and arrested Plaintiff Diego for possession of cocaine, based on the  
19 substance found in his house during the February 4<sup>th</sup> search. Plaintiff Diego was formally  
20 charged with endangering the welfare of children, unlawful possession of cocaine, and delivery  
21 of cocaine. This arrest and the filing of the charges arose from the field test allegedly performed  
22 by Defendant Monico, and reports by Defendant Monico to the court, reporting the powder as  
23 by Defendant Monico, and reports by Defendant Monico to the court, reporting the powder as  
24 by Defendant Monico, and reports by Defendant Monico to the court, reporting the powder as  
25 by Defendant Monico, and reports by Defendant Monico to the court, reporting the powder as

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cocaine. This was false in that Defendant Monico either did not test the substance or lied about the results. Plaintiff Diego was forced to sign a No Contact Order upon his release from jail on February 27, 2010, which prohibited him from going within 100 yards of Plaintiff Vladimir and Plaintiff Johnny, and prohibited him from going to his house.

35.

Defendant Wuthrich created a visitation plan wherein Plaintiff Lilia was only allowed to see her children on Thursdays from 2:30 – 3:30 p.m. There is nothing in any report concerning Plaintiff Lilia’s involvement in any criminal activity. All visits were at the Washington County DHS office and were supervised. Plaintiff Diego was not allowed to see his children at all.

36

Plaintiff Diego retained counsel to handle his case. His attorney requested that the white powder seized from Plaintiffs' residence on February 4<sup>th</sup> and allegedly field tested by defendants be sent to a forensic lab for testing. The powder was sent to the Department of State Police Forensic Laboratory by the Cornelius Police Department on April 15, 2010. On May 13, 2010, the results of the test came back to Defendant Monico: the Department of State Police Forensic Laboratory did not find any cocaine in the bag. In fact, the powder in the bag did not test positive for any controlled substance. The alleged field test done on the white powder by Defendant Monico was fake and contrived. The reports that Defendants had given to the court regarding the powder were false. Ex. 2, Test results from Department of State Police Forensic Laboratory.

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37.

After receipt of the Forensic Lab's report, all charges were dropped. The children were finally returned to their parents and their home on May 13, 2010.

# **PLAINTIFF DIEGO MATA-GONZALEZ**

## **FIRST CLAIM FOR RELIEF: Arrest without Probable Cause**

**42 U.S. C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments by Defendant Monico,  
Defendant Jansen, Defendant DeHaven, Defendant Brian, Defendant Bruce, Defendant  
Venable, Defendant Noffsinger, Defendant John Does #1-10, Defendant Hermann,  
Defendant Bowman, Defendant John Does #21-30**

38.

Plaintiff realleges paragraphs 1 through 37 as if more fully set forth herein.

39.

Plaintiff is entitled to be free from unlawful and unreasonable seizure and confinement of his person pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

40.

The acts and omissions of Defendants in arresting Plaintiff Diego violated Plaintiff Diego's protected rights against seizure of his person without probable cause, were objectively unreasonable based on the totality of the circumstances, and amounted to a deliberate indifference to Plaintiff Diego's protected rights. Defendants violated the requirements of the 4<sup>th</sup> and 14<sup>th</sup> Amendment rights held by Plaintiff Diego to the integrity of his person and his right to be free from unlawful arrest.

41.

The specific acts of Defendants, individually and in concert with each other, alleged to be deliberately indifferent are more particularly set forth below:

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1. On or about February 4, 2010, Defendant Monico and Defendant DeHaven entered Plaintiff Diego's residence after the search was over and without probable cause, read Plaintiff Diego his *Miranda* rights, and began to question Plaintiff Diego about drugs allegedly in his residence. Plaintiff Diego was not free to leave, was subject to interrogation, and the circumstances then present did not warrant the detention of Plaintiff Diego, as there was no probable cause of criminal activity.

2. On or about February 26, 2010, Defendants arrested Plaintiff Diego on charges based on known falsified evidence, and without probable cause, and

3. There was no need or lawful basis to arrest Plaintiff Diego under the circumstances then present on February 4, 2010, or February 26, 2010.

42

All Defendants' conduct was well defined by law and each defendant knew or should have known that their conduct was not only well below the standard of law described herein, but was illegal per se.

43

As a result of these Constitutional violations, Plaintiff Diego suffered physical, emotional and financial injury. The extent of Plaintiff Diego's damages will be more fully proven at trial.

#### **SECOND CLAIM FOR RELIEF: Malicious Prosecution**

**42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments by Defendant Monico,  
Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Brian, Defendant  
Venable, Defendant Noffsinger, Defendant John Does #1-10, Defendant Wuthrich,  
Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant Bowman,  
and Defendant John Does #21-30**

44.

Plaintiff Diego realleges paragraphs 1 through 43 as if more fully set forth herein.

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1 45.

2 Plaintiff is entitled to be free from initiation of criminal proceedings from an improper  
3 motive and without probable cause pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of  
4 the United States Constitution.

5 46.

6 The prosecution against Plaintiff Diego lacked probable cause initially as it was based on  
7 a lack of crimes committed, and the falsification of evidence with the specific intent to deprive  
8 Plaintiff of a fair trial and to guarantee he would be convicted of a crime. The acts and  
9 omissions of Defendants in charging Plaintiff Diego with various criminal charges when no  
10 evidence of probable cause existed to prosecute the action violated Plaintiff Diego's protected  
11 rights and were objectively unreasonable based on the totality of the circumstances, and  
12 amounted to deliberate indifference of Plaintiff Diego's protected rights. Defendants violated  
13 the requirements of the 4<sup>th</sup> and 14<sup>th</sup> Amendment rights held by Plaintiff to be free from malicious  
14 prosecution.

16 47.

17 The criminal prosecution was dismissed against Plaintiff Diego based on the illegal and  
18 unconstitutional actions of the defendants herein. The white powder that allegedly field-tested  
19 positive for cocaine was not cocaine or any other controlled substance, there was no crime, and  
20 the children were not endangered by Plaintiff Diego. Defendants lied about field testing the  
21 white powder and falsified the results. The results of the falsified test were sent together with the  
22 police reports to the Washington County District Attorney, who prosecuted Plaintiff Diego based  
23 on this false information from defendants.

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48.

All Defendants' conduct was well defined by law and each defendant knew or reasonably should have known that their conduct was not only well below the standard prescribed by law herein but was illegal per se.

49.

As a result of these Constitutional violations, Plaintiff Diego suffered physical, emotional, and financial injury. The extent of Plaintiff Diego's damages will be more fully proven at trial.

### **THIRD CLAIM FOR RELIEF: Illegal Search and Seizure**

## **42 U.S.C. § 1983 Violation of the 4th and 14<sup>th</sup> Amendments by**

**Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Venable, Defendant Brian, Defendant Noffsinger, Defendant John Does #1-10, Defendant Hermann, Defendant Bowman, and Defendant John Does #21-20**

50.

Plaintiff realleges paragraphs 1 through 49 as if more fully set forth herein.

51.

Plaintiff is entitled to be free from government searches of his property without probable cause and from interference with his possessory interest in that property pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendment of the United States Constitution. Government employees may conduct searches with a valid search warrant and are limited to seizing items specified in the search warrant.

52.

The specific acts of Defendants, individually and in concert with each other, alleged to be deliberately indifferent to Plaintiff Diego's protect constitutional rights are more particularly set forth below:

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1. Defendants seized objects outside the scope of those enumerated in the search warrant; and

2. Defendants planted and/or falsified evidence at Plaintiff Diego's home during the search on February 4, 2010.

53.

Defendants' conduct was well defined by law and each defendant knew or reasonably should have known that their conduct was not only well below the standard prescribed by law, but illegal per se.

54.

As a result of these Constitutional violations, Plaintiff Diego suffered physical, emotional, and financial injury. The extent of Plaintiff's damages will be more fully proven at trial.

#### **FOURTH CLAIM FOR RELIEF: Substantive Due Process Violations**

**42 U.S.C. § 1983 Violation of the 14<sup>th</sup> Amendment by Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Brian, Defendant Venable, Defendant Noffsinger, Defendant John Does #1-10, Defendant Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant Bowman, and Defendant John Does #21-30**

55.

Plaintiff Diego realleges paragraphs 1 through 54 as if more fully set forth herein.

56.

Plaintiff Diego has a right to a fair and just criminal process. These rights are secured and guaranteed under the due process clause of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. Defendants have a constitutional mandate to guarantee these rights to all criminally accused individuals, including Plaintiff Diego. Plaintiff Diego is entitled to be free

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from government from interference with his possessory interest in his property pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendment of the United States Constitution. Plaintiff Diego also has a fundamental right to live with his children and spouse, and to raise his children. These rights are also secured and guaranteed under the due process clause of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. These due process rights are manifest when a liberty interest is at stake.

57.

The specific acts of Defendants, individually and in concert with each other, alleged to be deliberately violate Plaintiff Diego's protected constitutional rights and intentionally deprived him of his protected liberty interest are more particularly set forth below:

1. Defendants seized objects from Plaintiff Diego’s residence that were outside the scope of their warrant;
  2. Defendants falsified evidence, among other acts lying about whether the white powder found had been “field-tested” and was positive for cocaine;
  3. Defendants arrested Plaintiff Diego without probable cause;
  4. Defendants withheld Plaintiff Diego from contact with his wife and children, based on known falsified evidence and without probable cause; and
  5. Defendants charged Plaintiff Diego with crimes he had not committed, knowing that the drug evidence was falsified and knowing that there was no probable cause to believe that the children were endangered by Plaintiff Diego’s actions.

58.

Plaintiff Diego's secured due process rights were intentionally deprived by defendants herein who engaged in illegal, malicious and wrongful conduct.

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1 59.

2 Defendants' conduct was well defined by law and each defendant knew or reasonably  
3 should have known that their conduct was not only well below the standard prescribed by law  
4 herein, but was illegal per se.

5 60.

6 As a result of these Constitutional violations, Plaintiff Diego suffered physical,  
7 emotional, and financial injury. The extent of Plaintiff Diego's damages will be more fully  
8 proven at trial.

9 10 **SUPPLEMENTAL STATE CLAIMS**

11 **FIFTH CLAIM FOR RELIEF: Malicious Prosecution State Tort**  
12 **Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant**  
13 **Brian, Defendant Noffsinger, Defendant Venable, Defendant Hermann, Defendant**  
14 **Bowman, Defendant John Does #1-10, and Defendant John Does #21-30, Defendant City of**  
15 **Cornelius, and Defendant Washington County**

16 61.

17 Plaintiff realleges paragraphs 1 through 60 as if more fully set forth herein.

18 62.

19 Oregon law mandates that all public employees be sued through their employer the public  
20 entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
21 Plaintiff may also sue the individual officer.

22 ///

23 ///

24 ///

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1                                 63.

2                                 Plaintiff Diego was subject to malicious prosecution, as the prosecution of Plaintiff Diego  
 3 by Defendants was not based in probable cause but on false testimony and evidence, was  
 4 maintained through dismissal, and the dismissal was favorable to Plaintiff Diego.

5                                 64.

6                                 The prosecution against Plaintiff Diego was maintained by all defendants herein with the  
 7 knowledge that defendants lacked probable cause to pursue the matter, and based on the  
 8 intentional manipulation of evidence, and fabrication of evidence. These actions were  
 9 intentional, illegal, and not immunized by law.

10                                 65.

11                                 Defendants' conduct was well defined by law and each defendant knew or reasonably  
 12 should have known that their conduct was not only well below the standard prescribed by law  
 13 herein, but was illegal per se.

14                                 66.

15                                 As a result of the course of conduct by Defendants, Plaintiff has suffered physical,  
 16 emotional and financial injury. The extent of Plaintiff's damages will be more fully proven at  
 17 trial.

18                                 **SIXTH CLAIM FOR RELIEF: Assault**

19                                 **Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant**  
 20                                 **Brian, Defendant Noffsinger, Defendant John Does #1-10, Defendant Hermann, Defendant**  
 21                                 **Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant**  
 22                                 **Washington County**

23                                 Michelle R Burrows  
 24                                     Attorney at Law  
 25                                 618 NW Glisan Suite 203  
 26                                     Portland OR, 97209  
 27                                     503/241-1955

1 67.  
2 Plaintiff Diego realleges paragraphs 1 through 66 as if more fully set forth herein.  
3  
4 68.

5 Oregon law mandates that all public employees be sued through their employer the public  
6 entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
7 Plaintiff may also sue the individual officer.

8 69.  
9 On or about February 4, 2010, and February 26, 2010, Plaintiff Diego was assaulted by  
10 the above-named defendants in the following manner:

- 11 1. Defendants detained Plaintiff Diego in his bedroom for questioning without  
12 probable cause, causing fear of future hostile contact; and  
13 2. Defendants arrested Plaintiff Diego without probable cause, causing hostile contact  
14 with Plaintiff Diego's person and fear of future hostile contact.

15 70.  
16 Defendants' actions demonstrated an attempt to violate Plaintiff Diego's person, and the  
17 ability to carry intention into effect.

18 71.  
19 Each of the actions described above were performed by Defendants while they were on  
20 duty, in uniform, and carrying a badge and a weapon.

21 72.  
22 Defendants' conduct was well defined by law and each defendant knew or reasonably  
23 should have known that their conduct was not only well below the standard prescribed by law  
24 herein, but was illegal per se.

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73.

As a result of the course of conduct by Defendants, Plaintiff Diego has suffered physical, emotional, and financial injury. The extent of Plaintiff Diego's injuries will be more fully proven at trial.

### **SEVENTH CLAIM FOR RELIEF: Battery**

**Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant Hermann, Defendant Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant Washington County**

74.

Plaintiff Diego realleges paragraphs 1 through 73 as if more fully set forth herein.

75.

Oregon law mandates that all public employees be sued through their employer the public entity. Oregon law mandates that the real party in interest in such actions is the public employer. Plaintiffs may also sue the individual officer.

76.

Plaintiff Diego alleges that on or about February 26, 2010, he was subject to battery by the above-named defendants in the following manner:

1. Defendants arrested Plaintiff Diego without probable cause, handcuffed him and forced him into the police car.

77.

Defendants' conduct was an intentional, voluntary act, which caused unpermitted harmful and offensive contact with Plaintiff Diego.

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78.

Each of the actions described in paragraph 76 above were performed by Defendants while they were on duty, in uniform, and carrying a badge and a weapon.

79.

As a result of the course of conduct by Defendants, Plaintiff Diego has suffered emotional, physical, and financial damage. The extent of Plaintiff Diego's damages will be more fully proven at trial.

## **EIGHTH CLAIM FOR RELIEF: Intentional Infliction of Emotional Distress**

**Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Brian, Defendant Venable, Defendant Noffsinger, Defendant Wuthrich, Defendant Kitto, Defendant John Does #1-10, Defendant Hermann, Defendant Bowman, Defendant Cushing, Defendant John Does #11-20, and Defendant John Does #21-30, Defendant City of Cornelius, and Defendant Washington County**

80

Plaintiff Diego realleges paragraphs 1 through 79 as if more fully set forth herein.

81

Oregon law mandates that all public employees be sued through their employer the public entity. Oregon law mandates that the real party in interest in such actions is the public employer. Plaintiffs may also sue the individual officer.

82

Plaintiff Diego alleges from February 2010 through May 2010, he was subject to intentional infliction of emotional distress by the above-named defendants in the following manner:

1. Plaintiff Diego was openly accused by Defendants of serious crimes he did not commit; and

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2. Plaintiff Diego was kept from seeing his family from February 2010 through May 2010 by Defendants, based on crimes he did not commit, and which Defendants knew he did not commit.

83.

Defendants' conduct was outrageous in the extreme and Defendants acted intentionally and recklessly to inflict severe emotional distress.

84.

Each of the incidents described in paragraph 82 above were conducted by Defendants while they were on duty, in uniform, and carrying a badge and weapon.

85.

As a result of Defendants' actions, Plaintiff Diego suffered severe emotional distress. The extent of Plaintiff Diego's damages will be more fully proven at trial.

LILIA LOPEZ-GUZMAN

### **NINTH CLAIM FOR RELIEF: Substantive Due Process Violation**

**42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendment by Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Venable, Defendant Brian, Defendant Noffsinger, Defendant John Does #1-10, Defendant Hermann, Defendant Bowman, Defendant John Does #21-30, Defendant Wuthrich, Defendant Kitto, and Defendant John Does #11-20**

86.

Plaintiff Lilia realleges paragraphs 1 through 85 as if more fully set forth herein.

87.

Plaintiff Lilia has a fundamental constitutional right to live with and care for her husband and children. Plaintiff Lilia has a fundamental right to raise her children. These rights are

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1 secured and guaranteed under the due process clause of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the  
2 United States Constitution. Plaintiff Lilia is also entitled to be free from government  
3 interference with her possessory interest in her property pursuant to the parameters of the 4<sup>th</sup> and  
4 14<sup>th</sup> Amendment. These due process rights are manifest when a liberty interest is at stake.  
5

6 88.  
7

8 The specific acts of Defendants, individually and in concert with each other, alleged to  
9 deliberately violated Plaintiff Lilia's protected constitutional rights and intentionally deprive her  
10 of her protected liberty interests are more particularly set forth below:

11 1. Defendants seized objects from Plaintiff Lilia's residence that were outside the scope  
12 of their warrant;

13 2. Defendants took Plaintiff Vladimir and Plaintiff Johnny away from Plaintiff Lilia  
14 without probable cause to believe that the children were in danger, and did not allow Plaintiff  
15 Lilia to see them more than once a week;

16 3. Defendants would not let Plaintiff Lilia have contact with her husband, even though  
17 Defendants knew that the evidence on which the crimes against him was based was falsified, and  
18 that he presented no danger to his wife; and

19 4. Plaintiff Lilia was denied the right to care for and live with her family and to raise her  
20 children.

21 89.  
22

23 Plaintiff Lilia's secured due process rights were intentionally deprived by defendants  
24 herein who engaged in illegal, malicious and wrongful conduct.  
25

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90.

Defendants' conduct was well defined by law and each defendant knew or reasonably should have known that their conduct was not only well below the standard prescribed by law herein, but was illegal per se.

91.

As a result of these constitutional violations, Plaintiff Lilia has suffered physical, emotional, and financial injury. The extent of Plaintiff Lilia's damages will be more fully proven at trial.

**TENTH CLAIM FOR RELIEF: Unlawful Search and Seizure**

**42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments by Defendant Monico,  
Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Venable, Defendant  
Brian, Defendant Noffsinger, Defendant John Does #1-10, Defendant Hermann, Defendant  
Bowman, Defendant John Does #21-30**

92.

Plaintiff Lilia realleges paragraphs 1 through 91 as if more fully set forth herein.

93.

Plaintiff is entitled to be free from government searches of her property without probable cause and from interference with her possessory interest in that property pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution. Government employees may conduct searches with a valid search warrant and are limited to seizing items specified in a search warrant.

111

11

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94.

The specific acts of Defendants, individually and in concert with each other, alleged to be deliberately indifferent to Plaintiff Lilia's protected constitutional rights are more particularly set forth below:

1. Defendants seized objects outside the scope of those enumerated in the search warrant; and
  2. Defendants planted evidence and/or falsified evidence at Plaintiff Lilia's home during the search on or about February 4, 2010.

95.

Defendants' conduct was well defined by law and each defendant knew or reasonable should have known that their conduct was not only well below the standard prescribed by law, but illegal per se.

96.

As a result of these Constitutional violations, Plaintiff Lilia suffered physical, emotional, and financial injury. The extent of Plaintiff Lilia's damages will be more fully proven at trial.

## STATE TORTS

**ELEVENTH CLAIM FOR RELIEF: Intentional Infliction of Emotional Distress**

**Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Brian, Defendant Bruce, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant Bowman, and Defendant John Does #21-30, Defendant City of Cornelius, and Defendant Washington County**

97.

Plaintiff Lilia realleges paragraphs 1 through 96 as if more fully set forth herein.

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1 98.

2 Oregon law mandates that all public employees be sued through their employer the public  
3 entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
4 Plaintiffs may also sue the individual officer.

5 99.

6 Plaintiff Lilia alleges that from February 2010 through May 2010, she was subject to  
7 intentional infliction of emotional distress by the above-named defendants in the following  
8 manner:

9 1. Plaintiff Lilia's husband was openly accused by Defendants of crimes he did not  
10 commit, which Plaintiff Lilia knew he did not commit and Defendants knew he did not commit;

11 2. Plaintiff Lilia could not see her husband, Plaintiff Diego, from the end of February  
12 2010 through the middle of May 2010 because he was being accused of crimes he did not  
13 commit, which she knew he did not commit and which Defendants knew he did not commit; and

14 3. Plaintiff Lilia could not see her children, Plaintiff Vladimir or Plaintiff Johnny, from  
15 the end of February 2010 through the middle of May 2010 without a supervisor, and then only  
16 for one hour a week. Her children were taken from her by the government without probable  
17 cause that she had committed any crimes or endangered the children in any way.

18 100.

19 Defendants' conduct was outrageous in the extreme and Defendants acted intentionally  
20 and recklessly to inflict severe emotional distress.

21     ///

22     ///

23  
24  
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101.

Each of the incidents described in paragraph 99 above were conducted by Defendants while they were on duty, in uniform, and carrying a badge and a weapon.

102.

As a result of Defendants' actions, Plaintiff Lilia suffered severe emotional distress. The extent of Plaintiff Lilia's damages will be more fully proven at trial.

VLADIMIR MATA-LOPEZ

**TWELFTH CLAIM FOR RELIEF: Arrest without Probable Cause**

**42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments by Defendant Monico,  
Defendant DeHaven, Defendant Kitto, Defendant Wuthrich, Defendants John Does #1-10,  
Defendants John Does #11-20, and Defendant John Does #21-30**

103.

Plaintiff realleges paragraph 1 through 102 as if more fully set forth herein.

104.

Plaintiff is entitled to be free from unlawful and unreasonable seizure and confinement of his person pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

105.

The acts and omissions of Defendants in arresting Plaintiff Vladimir violated Plaintiff Vladimir's protected rights against seizure of his person without probable cause, were objectively unreasonable based on the totality of the circumstances, and amounted to a deliberate indifference to Plaintiff Vladimir's protected rights. Defendants violated the requirements of the

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4<sup>th</sup> and 14<sup>th</sup> Amendment rights held by Plaintiff Vladimir to the integrity of his person and his right to be free from unlawful arrest.

106.

The specific acts of Defendants, individually and in concert with each other, alleged to be deliberately indifferent are more particularly set forth below:

1. Defendants seized Plaintiff Vladimir's person and took him from his home, based on falsified evidence and without probable cause;

2. Defendants removed Plaintiff Vladimir from his parents without cause, put him in foster care where he was subject to emotional abuse and damage.

107.

All Defendants' conduct was well defined by law and each defendant knew or should have known that their conduct was not only well below the standard of law described herein, but was illegal per se.

108.

As a result of these Constitutional violations, Plaintiff Vladimir suffered physical, emotional, and financial injury. The extent of Plaintiff Vladimir's damages will be more fully proven at trial.

**THIRTEENTH CLAIM FOR RELIEF: Substantive Due Process Violation**  
42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendment by Defendant Monico, Defendant DeHaven, Defendant Wuthrich, Defendant Kitto, Defendant John Does #1-10, Defendant John Does #11-20, and Defendant John Does #21-30

109.

Plaintiff Vladimir realleges paragraphs 1 through 108 as if more fully set forth herein.

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110.

Plaintiff Vladimir has a fundamental constitutional right to live with his parents, and be loved and cared for by them. These rights are secured and guaranteed under the due process clause of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. These due process rights are manifest when a liberty interest is at stake.

111.

The specific acts of Defendants, individually and in concert with each other, alleged to deliberately violate Plaintiff Vladimir's protected constitutional rights and intentionally deprive him of his protected liberty interest are more particularly set forth below:

1. Defendants seized Plaintiff Vladimir and withheld from his mother and father for several months, based on falsified evidence and without probable cause; and

2. During these months, Defendants did not allow Plaintiff Vladimir to see his father at all and only allowed him to see his mother for one hour a week, and under supervision. These actions deprived Plaintiff Vladimir of his fundamental right to live with his mother and father, and to experience parental love. This intentional deprivation of a fundamental liberty interest was based on known falsified evidence and on policies implemented by Defendants without probable cause.

112.

Plaintiff Vladimir's secured due process rights were intentionally deprived by defendants herein who engaged in illegal, malicious and wrongful conduct.

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113.

2 Defendants' conduct was well defined by law and each defendant knew or reasonably  
3 should have known that their conduct was not only well below the standard prescribed by law  
4 herein, but was illegal per se.  
5

114.

6 As a result of these Constitutional violations, Plaintiff Vladimir suffered physical,  
7 emotional, and financial injury. The extent of Plaintiff Vladimir damages will be more fully  
8 proven at trial.  
9

#### 10 STATE CLAIMS

##### 11 **FOURTEENTH CLAIM FOR RELIEF: Intentional Infliction of Emotional Distress**

12 **Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant**  
**Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant**  
**Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant**  
**Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant**  
**Washington County**

15 115.

16 Plaintiff Vladimir realleges paragraphs 1 through 114 as if more fully set forth herein.  
17

116.

18 Oregon law mandates that all public employees be sued through their employer the public  
19 entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
20 Plaintiffs may also sue the individual officer.  
21

22 ///

23 ///

24 ///

25  
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117.

Plaintiff Vladimir alleges from February 2010 through May 2010 he was subject to intentional infliction of emotional distress by the above-named defendants in the following manner:

1. Plaintiff Vladimir was taken by Department of Human Services and placed in foster care without any explanation;

2. Plaintiff Vladimir was only allowed to see Plaintiff Lilia, his mother, once a week, and then only for an hour under supervision, and did not know how long this arrangement was going to last;

3. Plaintiff Vladimir was not allowed to see Plaintiff Diego, his father, at all, and did not know how long this arrangement was going to last; and

4. This occurrence was based on known falsified evidence and allegations of crimes Defendants knew had not been committed.

118.

Defendants' conduct was outrageous in the extreme and Defendants acted intentionally and recklessly to inflict severe emotional distress.

119.

Each of the incidents described in paragraph 117 above were conducted by Defendants while they were on duty, in uniform, and carrying a badge and weapon.

120.

As a result of Defendants' actions, Plaintiff Vladimir suffered severe emotional distress. The extent of Plaintiff Vladimir's damages will be more fully proven at trial.

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**FIFTEENTH CLAIM FOR RELIEF: Assault**

1      **Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant**  
2      **Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant**  
3      **Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant**  
4      **Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant**  
5      **Washington County**

6                          121.

7                          Plaintiff Vladimir realleges paragraphs 1 through 120 as if more fully set forth herein.

8                          122.

9                          Oregon law mandates that all public employees be sued through their employer the public  
10                         entity. Oregon law mandates that the real party in interest in such actions is the public employer.

11                         Plaintiff may also sue the individual officer.

12                         123.

13                         Plaintiff Vladimir alleges that on or about February 25, 2010, he was subject to assault by  
14                         the above-named defendants in the following manner:

15                         1. Plaintiff Vladimir was taken into custody of the government against his will causing  
16                         hostile contact with Plaintiff Vladimir's person and fear of future hostile contact.

17                         124.

18                         Defendants' actions demonstrated an attempt to violate Plaintiff Vladimir's person, and  
19                         the ability to carry intention into effect.

20                         125.

21                         Each of the actions described above were performed by Defendants while they were on  
22                         duty, in uniform, and carrying a badge and a weapon.

23                         ///

24                         ///

25                         ///

26                         Michelle R Burrows  
                               Attorney at Law  
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                               Portland OR, 97209  
                               503/241-1955

126.

Defendants' conduct was well defined by law and each Defendant knew or reasonably  
should have known that their conduct was not only well below the standard prescribed by law  
herein, but was illegal per se.

127.

As a result of the course of conduct by Defendants, Plaintiff Vladimir has suffered  
physical and emotional injury. The extent of Plaintiff Vladimir's injures will be more fully  
proven at trial.

**SIXTEENTH CLAIM FOR RELIEF: Battery**

**Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant Bowman, and Defendant Does #21-30, Defendant City of Cornelius, and Defendant Washington County**

128.

Plaintiff Vladimir realleges paragraphs 1 through 127 as if more fully set forth herein.

129.

Oregon law mandates that all public employees be sued through their employer the public  
entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
Plaintiff may also sue the individual officer.

130.

Plaintiff Vladimir alleges that on or about February 25, 2010, he was subject to battery by  
the above-named defendants in the following manner:

1. Defendants seized Plaintiff Vladimir without his consent; and

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2. Defendants forced Plaintiff Vladimir to go into foster care when Plaintiff Vladimir did not want to go, and when there was no reason to make him go.

131.

Defendants' conduct was an intentional, voluntary act, which caused unpermitted, harmful and offensive contact with Plaintiff Vladimir.

132.

Each of the actions described in paragraph 130 above were performed by Defendants while they were on duty, in uniform, and carrying a badge and weapon.

133.

As a result of the course of conduct by Defendants, Plaintiff Vladimir has suffered physical and emotional damage. The extent of Plaintiff Vladimir's damages will be more fully proven at trial.

JOHNNY MATA-LOPEZ

## **SEVENTEENTH CLAIM FOR RELIEF: Arrest without Probable Cause**

**42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendment by Defendant Monico, Defendant DeHaven, Defendant Wuthrich, Defendant Kitto, Defendant John Does #1-10, Defendant John Does #11-20, Defendant John Does #21-30**

134.

Plaintiff Johnny realleges paragraphs 1 through 133 as if more fully set forth herein.

135.

Plaintiff Johnny is entitled to be free from unlawful and unreasonable seizure and confinement of his person pursuant to the parameters of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

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1 136.

2 The acts and omissions of Defendants in arresting Plaintiff Johnny violated Plaintiff  
3 Johnny's protected rights against seizure of his person without probable cause, were objectively  
4 unreasonable based on the totality of the circumstances, and amounted to a deliberate  
5 indifference to Plaintiff Johnny's protected rights. Defendants violated the requirements of the  
6 4<sup>th</sup> and 14<sup>th</sup> Amendment rights held by Plaintiff Johnny to the integrity of his person and his right  
7 to be free from unlawful arrest.  
8

9 137.

10 The specific acts of Defendants, individually and in concert with each other, alleged to be  
11 deliberately indifferent are more particularly set forth below:

- 12 1. Defendants seized Plaintiff Johnny's person and took him from his home, based on  
13 falsified evidence and without probable cause; and  
14  
15 2. Defendant placed Plaintiff Johnny in foster care where he suffered emotional abuse  
16 and damage.  
17

18 138.

19 All Defendants' conduct was well defined by law and each defendant knew or should  
20 have known that their conduct was not only well below the standard of law described herein, but  
21 was illegal per se.  
22

23 139.

24 As a result of these Constitutional violations, Plaintiff Johnny has suffered physical,  
25 emotional, and financial injury. The extent of Plaintiff Johnny's damages will be more fully  
26 proven at trial.  
27

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33

1                   **EIGHTEENTH CLAIM FOR RELIEF: Substantive Due Process Violation**

2                   **42 U.S.C. § 1983 Violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendment by Defendant Monico, Defendant**  
3                   **DeHaven, Defendant Wuthrich, Defendant Kitto, Defendant John Does #1-10, Defendant**  
4                   **John Does #11-20, Defendant John Does #21-30**

5                   140.

6                   Plaintiff Johnny realleges paragraphs 1 through 139 as if more fully set forth herein.

7                   141.

8                   Plaintiff Johnny has a fundamental constitutional right to live with his parents, and be  
9                   loved and cared for by them. These rights are secured and guaranteed under the due process  
10                  clause of the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. These due process  
11                  rights are manifest when a liberty interest is at stake.

12                  142.

13                  The specific acts of Defendants, individually and in concert with each other, alleged to  
14                  deliberately violate Plaintiff Johnny's protected constitutional rights and intentionally deprive  
15                  him of his protected liberty interest are more particularly set forth below:

16                  1. Defendants allowed Plaintiff Johnny to be seized and withheld from his mother and  
17                  father for several months, based on known falsified evidence and without probable cause; and

18                  2. During these months, Defendants did not allow Plaintiff Johnny to see his father at all  
19                  and only allowed him to see his mother for one hour a week, and under supervision. These  
20                  actions deprived Plaintiff Johnny of his fundamental right to live with his mother and father, and  
21                  to experience parental love. This intentional deprivation of a fundamental liberty interest was  
22                  based on known falsified evidence and on policies implemented without probable cause.

23  
24  
25  
26                  Michelle R Burrows  
                        Attorney at Law  
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1 143.

2 Plaintiff Johnny's secured due process rights were intentionally deprived by defendants  
3 herein who engaged in illegal, malicious and wrongful conduct.

4 144.

5 Defendants' conduct was well defined by law and each defendant knew or reasonably  
6 should have known that their conduct was not only well below the standard prescribed by law  
7 herein, but was illegal per se.

8 145.

9 As a result of these Constitutional violations, Plaintiff Johnny has suffered physical,  
10 emotional, and financial injury. The extent of Plaintiff Diego's damages will be more fully  
11 proven at trial.

12 STATE CLAIMS

13 **NINETEENTH CLAIM FOR RELIEF: Intentional Infliction of Emotional Distress**  
14 **Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant**  
15 **Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant**  
16 **Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant**  
17 **Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant**  
18 **Washington County**

19 146.

20 Plaintiff Johnny realleges paragraphs 1 through 145 as if more fully set forth herein.

21 147.

22 Oregon law mandates that all public employees be sued through their employer the public  
23 entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
24 Plaintiff may also sue the individual officer.

25  
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1 148.

2 Plaintiff Johnny alleges from February 2010 to May 2010, he was subject to intentional  
3 infliction of emotional distress by the above-named defendants in the following manner:

4 1. Plaintiff Johnny was taken by Department of Human Services and placed in foster  
5 care without any explanation;

6 2. Plaintiff Johnny was only allowed to see Plaintiff Lilia, his mother, once a week, and  
7 then only for an hour under supervision, and did not know how long this arrangement was going  
8 to last;

9 3. Plaintiff Johnny was not allowed to see Plaintiff Diego, his father, at all, and did not  
10 know how long this arrangement was going to last; and

11 4. This occurrence was based on known falsified evidence and allegations of crimes  
12 Defendants knew had not been committed.

13 149.

14 Defendants' conduct was outrageous in the extreme and Defendants acted intentionally  
15 and recklessly to inflict severe emotional distress.

16 150.

17 Each of the incidents described in paragraph 148 above were conducted by Defendants  
18 while they were on duty, in uniform, and carrying a badge and weapon.

19 151.

20 As a result of Defendants' actions, Plaintiff suffered severe emotional distress. The  
21 extent of Plaintiff Johnny's damages will be more fully proven at trial.

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## **TWENTIETH CLAIM FOR RELIEF: Assault**

Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant Washington County

152.

Plaintiff Johnny realleges paragraphs 1 through 151 as if more fully set forth herein.

153.

Oregon law mandates that all public employees be sued through their employer the public entity. Oregon law mandates that the real party in interest in such actions is the public employer. Plaintiff may also sue the individual officer.

154

Plaintiff Johnny alleges that on or about February 25, 2010, he was subject to assault by the above-named defendants in the following manner:

1. Plaintiff Johnny was taken into custody of the government against his will causing hostile contact with Plaintiff Johnny's person and fear of future hostile contact.

155

Defendants' actions demonstrated an attempt to violate Plaintiff Johnny's person, and the ability to carry intention into effect.

156

Each of the actions described in paragraph 154 above were performed by Defendants while they were on duty, in uniform, and carrying a badge and a weapon.

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1 157.

2 Defendants' conduct was well defined by law and each defendant knew or reasonably  
3 should have known that their conduct was only well below the standard prescribed by law herein,  
4 but was illegal per se.  
5

6 158.

7 As a result of the course of conduct by Defendants, Plaintiff Johnny suffered physical and  
8 emotional injury. The extent of Plaintiff Johnny's injuries will be more fully proven at trial.  
9

10 **TWENTY-FIRST CLAIM FOR RELIEF: Battery**

11 **Defendant Monico, Defendant Jansen, Defendant DeHaven, Defendant Bruce, Defendant**  
**Brian, Defendant Noffsinger, Defendant Venable, Defendant John Does #1-10, Defendant**  
**Wuthrich, Defendant Kitto, Defendant John Does #11-20, Defendant Hermann, Defendant**  
**Bowman, Defendant John Does #21-30, Defendant City of Cornelius, and Defendant**  
**Washington County**

12 159.

13 Plaintiff Johnny realleges paragraphs 1 through 158 as if more fully set forth herein.  
14

15 160.

16 Oregon law mandates that all public employees be sued through their employer the public  
17 entity. Oregon law mandates that the real party in interest in such actions is the public employer.  
18 Plaintiff may also sue the individual officer.  
19

20 161.

21 Plaintiff Johnny alleges that on or about February 25, 2010, he was subject to battery by  
22 the above-named defendants in the following manner:  
23

24 1. Defendants seized Plaintiff Johnny and took him from his home without his consent;  
25 and

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2. Defendants forced Plaintiff Johnny to go into foster care when Plaintiff Johnny did not want to go, and when there was no reason to make him go.

162.

Defendants' conduct was an intentional, voluntary act, which caused unpermitted, harmful and offensive contact with Plaintiff Johnny.

163.

Each of the actions described in paragraph 161 above were performed by Defendants while they were on duty, in uniform, and carrying a badge and a weapon.

164.

As a result of the course of conduct by Defendants, Plaintiff Johnny has suffered emotional and physical damage. The extent of Plaintiff Johnny's damages will be more fully proven at trial.

WHEREFORE Plaintiffs request that this Court grant judgment as follows:

1. Judgment against Defendants for economic damages in an amount to be proven at trial;
  2. Judgment against Defendants for non-economic damages in an amount to be proven at trial;
  3. Judgment against Defendants for punitive damages in a fair and reasonable amount to be proven at trial;
  4. Judgment against Defendants for deterrence damages in a fair and reasonable amount to be proven at trial; and

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5. Judgment for costs, interests, attorney fees and such other and further relief as the Court deems just and equitable.

DATED this February 17, 2011

Respectfully submitted,

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